

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
WorldCom Petition for Waiver of the) CC Docket No. 96-98
Supplemental Order Clarification)
Regarding UNE Combinations)

COMMENTS OF QWEST CORPORATION

Qwest Corporation¹ ("Qwest") hereby submits its Comments on the Petition for a Waiver ("Petition") of the Federal Communications Commission's ("Commission") Supplemental Order Clarification² in the above-referenced docket filed by WorldCom, Inc. ("WorldCom").³ WorldCom has not filed a valid waiver request, but rather an untimely petition for reconsideration of the Supplemental Order Clarification. Accordingly, the Commission should dismiss WorldCom's Petition.

WorldCom's Petition must be denied because it fails to demonstrate special

¹ On June 30, 2000, U S WEST, Inc., the parent and sole shareholder of U S WEST Communications, Inc., merged with and into Qwest Communications International Inc. Further, on July 6, 2000, U S WEST Communications, Inc. was renamed Qwest Corporation.

² See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification, 15 FCC Rcd. 9587 (2000) ("Supplemental Order Clarification"), appeal pending sub nom. Competitive Telecommunications Association v. FCC, No. 00-1272 (D.C. Cir. pet for rev. filed June 23, 2000).

³ See Public Notice, Comments Requested on WorldCom Petition for Waiver of the Supplemental Order Clarification Regarding UNE Combinations, CC Docket No. 96-98, DA 00-2131, rel. Sep. 18, 2000; see also WorldCom Petition, CC Docket No. 96-98, filed Sep. 12, 2000.

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circumstances that warrant deviating from the interim special access conversion rules established by the Commission. WorldCom is not seeking relief from the “significant local service requirement” itself, but rather the so-called “commingling” prohibition (i.e., the prohibition on combining unbundled loop-transport combinations with tariffed special access services), and the customer usage and collocation requirements. The heart of WorldCom’s Petition is its claim that its network is unique because “only local circuits are attached to Class 5 switches” and it is possible to trace the local circuits to termination points at its switch.⁴

According to WorldCom, it is easy to verify whether WorldCom is using a circuit to provide exclusively local exchange and switched access services, and thus easy to design a waiver that prevents WorldCom from converting dedicated access circuits.

Even if WorldCom were correct that its network is unique (and Qwest does not believe it is), the alleged unique aspects of its network have nothing whatsoever to do with the waiver WorldCom is seeking. The Supplemental Order Clarification clearly states that a requesting carrier may convert its special access services to unbundled loop-transport combinations merely by certifying that the circuits qualify under one of the Commission’s three local usage options.⁵ Therefore, WorldCom will be able to convert circuits whether or not there is a rebuttable presumption that any circuit that terminates at one of its Class 5 switches is eligible for conversion to UNE rates merely by providing the requisite certification. WorldCom is not entitled to a special presumption that its circuits are always used

⁴ See WorldCom Petition at 15.

exclusively for local service because, as WorldCom itself acknowledges, the circuits in question are used for both local exchange and switched access service.⁶

WorldCom provides no explanation for why its purportedly unique network cannot be reconfigured to satisfy one of the three options for conversion in the Supplemental Order Clarification. If WorldCom's circuits are in fact used to provide primarily local voice service, then it will be eligible to convert these circuits under option three, which does not have a collocation requirement.⁷ Therefore, it is apparent that WorldCom is really seeking a waiver of the interim commingling prohibition to allow it to combine unbundled DS1 circuits with the incumbent LECs' tariffed DS3 special access services.⁸ There is nothing unique about WorldCom's network that warrants a waiver of the commingling prohibition.

Most carriers seeking to convert special access circuits to unbundled loop-transport combinations currently provide a mixture of local exchange and exchange access. As a result, some "regrooming" of circuits will be required to consolidate local exchange circuits so they qualify for conversion under the Supplemental Order Clarification. Grant of WorldCom's Petition would lead to a flood of similar

⁵ See Supplemental Order Clarification, 15 FCC Rcd. at 9602-03 ¶ 29.

⁶ Incumbent local exchange carriers ("LEC") must continue to have the right to audit converted circuits. The fact that a circuit terminates at a Class 5 switch would be an indicia of local service if such an audit were to occur, but it is not conclusive evidence that the circuit qualifies for conversion under one of the local usage options.

⁷ See Supplemental Order Clarification, 15 FCC Rcd. at 9598-9600 ¶ 22.

⁸ In fact, WorldCom expressly states that it will pay the "full access service price" for the commingled DS3 circuits over which its local traffic will travel. See WorldCom Petition at 3.

requests by carriers seeking to avoid reconfiguring their existing networks to create unbundled loop-transport combinations that satisfy the Commission's criteria for conversion in the Supplemental Order Clarification. The result would be wholesale revision of the Commission's special access conversion rules before the Commission has the opportunity to properly consider the issue in the upcoming rulemaking proceeding.⁹ Thus, the issue is not whether WorldCom would be circumventing the "significant local service" requirement, but rather that it would be eliminating the Commission's interim commingling prohibition through the waiver process.

WorldCom's Petition does not come close to satisfying the stringent test for obtaining a waiver of the Supplemental Order Clarification. In the seminal WAIT Radio v. FCC decision, the D.C. Circuit explained that "[t]he very essence of a waiver is the assumed validity of the general rule."¹⁰ For that reason, a petition for waiver "faces a high hurdle even at the starting gate."¹¹ In supporting a case for waiver, the petitioner must demonstrate that there are "special circumstances [that] warrant a deviation from the general rule and such deviation will serve the public interest."¹²

⁹ In the Supplemental Order Clarification, the Commission announced it will issue a Public Notice early in 2001 to gather additional evidence relevant to the impairment analysis for special access services. See Supplemental Order Clarification, 15 FCC Rcd. at 9596-97 ¶ 17. Any revision of the special access conversion rules should be considered in the context of that upcoming proceeding.

¹⁰ WAIT Radio v. FCC, 418 F.2d 1153, 1158 (D.C. Cir. 1969), cert. denied 409 U.S. 1027 (1972).

¹¹ Id. at 1157.

¹² Northeast Cellular Telephone Co., L.P. v. FCC, 897 F.2d 1153, 1166 (D.C. Cir. 1990).

In prior cases, the Commission has set a high threshold for establishing unique circumstances justifying a waiver. For example, the Commission denied a request for waiver of the equal access charge rule filed by GTE Service Corporation (“GTE”), which argued that it had suffered competitive pressures and loss of revenues in California because of the rule.¹³ The Commission concluded that GTE had not demonstrated that it faced unique circumstances because it “made no showing that the equal charge rule has a different or greater impact upon GTE in LATA 5 than other LECs face in their own regions.”¹⁴ In fact, a number of other LECs indicated they were experiencing a similar set of circumstances and therefore would be requesting similar waivers.¹⁵ When the requested waiver applies broadly to an entire class of companies, as it does here, the appropriate course of action is substantive modification of the Commission’s rules through a rulemaking proceeding.¹⁶

WorldCom’s attempt to manufacture special circumstances is nothing but a thinly-veiled attempt to modify an important substantive provision of the Supplemental Order Clarification on an industry-wide basis. In effect, WorldCom has filed an untimely petition for reconsideration long after the deadline for such a

¹³ See In the Matter of Transport Rate Structure and Pricing: Petition for Waiver of the Transport Rules filed by GTE Service Corporation, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd. 7006 (1992) (denying GTE’s petition for waiver of the equal charge rules).

¹⁴ Id. at 7070 ¶ 151.

¹⁵ See id.

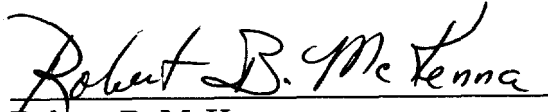
petition has passed. The Commission cannot allow its rules to be casually manipulated via the waiver process, as WorldCom is attempting to do here.

For these reasons, the Commission should deny WorldCom's Petition for a waiver of the Supplemental Order Clarification.

Respectfully submitted,

QWEST CORPORATION

By:


Robert B. McKenna
Jeffrey A. Brueggeman
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
303 672-2861

Its Attorneys

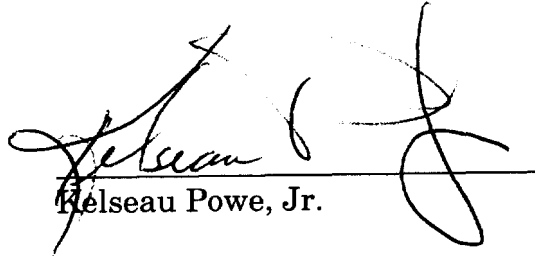
Of Counsel,
Dan L. Poole

October 2, 2000

¹⁶ See In the Matter of GVNW, Inc./Management and Citizens Utilities Company Applications for Review, Memorandum Opinion and Order, 14 FCC Rcd. 13670 (1999).

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 2nd day of October, 2000, I have caused a copy of the foregoing **COMMENTS OF QWEST CORPORATION** to be served, via first class United States mail, postage prepaid, upon the persons listed on the attached service list.



Kelseau Powe, Jr.

*Served via hand delivery

*William E. Kennard
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

*Gloria Tristani
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

*Michael K. Powell
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

*Harold Furchtgott-Roth
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

*Susan P. Ness
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

*Dorothy Attwood
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

*Michelle Carey
Federal Communications Commission
Policy and Program Planning Division
Room 5C-207
Portals II
445 12th Street, S.W.
Washington, DC 20554

*International Transcription
Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

*Jodie Donovan-May
Federal Communications Commission
Policy and Program Planning Division
Room 5C-207
Portals II
445 12th Street, S.W.
Washington, DC 20554

Henry G. Hultquist
WorldCom, Inc.
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006